

complaint

Mr E has complained about Tesco underwriting Limited's decision to cancel his car insurance policy as if it didn't exist.

background

In November 2017 Mr E bought a car insurance policy with Tesco. He said he lived in a city which I'll call 'B'.

In January 2018 Mr E made a claim to Tesco. It settled his claim as a total loss. Mr E insured a replacement car with Tesco.

Mr E made a second claim under his policy as he was involved in another incident in March 2018. In April 2018 Tesco discovered during a call with Mr E that he had registered his replacement car in January 2018 at an address in city 'L'. Mr E said he told Tesco a couple of months ago that he was working and living in L. Tesco asked Mr E if he could provide documents to show he lived at the address in L. Mr E told Tesco he couldn't provide utility documents for either address.

Tesco couldn't find a call from Mr E where he told it he was working in L. It discovered that Mr E had tried to obtain quotes online between January and April 2018 for address L. But no quote was provided as Tesco said it wouldn't have provided cover for this address. And as Mr E said he couldn't provide proof of living at either address, Tesco decided to cancel Mr E's policy as if it didn't exist from the date he said he put address 'L' on the V5 registration document for his replacement car. It said it wouldn't refund any premium to him.

Mr E asked us to look at his complaint. He wanted Tesco to deal with his claim as his replacement car was a total loss. He said he suffered personal injury in the March 2018 incident. He wanted Tesco to compensate him for his losses and for its decision.

Our investigator thought that Tesco's decision at the time was reasonable. But Mr E later explained that he was living at address B and address L as he was working three days a week in L. His boss had asked him to consider relocating to L and this was why he had looked for quotes online.

Because Mr E then provided utility bills for address 'B', she thought Tesco should reconsider his claim in line with the remaining terms and conditions of the policy.

Tesco didn't agree. I issued a provisional decision on 4 February 2019. I thought Tesco had acted reasonably – so I didn't intend to uphold Mr E's complaint.

Neither Tesco nor Mr E has replied to my provisional decision. As the deadline to provide further comments has passed, the case has been passed back to me to make a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I don't intend to uphold it.

As explained in my provisional decision, I think Tesco's decision to cancel Mr E's policy as if it didn't exist was reasonable. I'll explain why.

When an insurer decides to cancel a policy as if it didn't exist it can do this if the customer misrepresented the facts when they bought the policy. The insurer can also decide whether the customer did this carelessly or deliberately. We look at the Consumer Insurance (Disclosure and Representations) Act 2012 (known as 'The Act') to see if an insurer has acted in a fair and reasonable way.

The Act says that the insurer should ask a clear question. The consumer has a duty to answer the question correctly, honestly and to the best of their knowledge. If a consumer was asked a clear question which they didn't answer correctly, the next step is to decide whether the misrepresentation was careless or deliberate.

If the misrepresentation was careless, and if the insurer would have still provided cover (even if on different terms), we'd expect the insurer to apply those terms and to allow the policy to continue and meet any claim as it would under the policy.

But if the misrepresentation is deliberate – even if the insurer would have provided a policy on different terms – it can decide to cancel the policy as if it didn't exist, retain the premium under the policy – and decide not to meet any claim made under the policy.

The same approach applies where an insurer made it clear that a significant change during the period the policy is in place should be disclosed – but the customer fails to disclose it.

Tesco's policy highlights that there are changes Mr E must tell it about. It says;

"Please remember that if you do not tell the administrator about any changes this could result in your contract of insurance being voided (as if the policy never existed), all claims under your policy being refused and all premiums that you have paid being retained. Some examples of the changes you must tell the administrator about are as follows:

You change your address or the address where you keep the car."

Tesco has provided key call recordings of its conversations with Mr E. In a conversation in April 2018, while it was dealing with Mr E's second claim, Tesco asked Mr E for the address on the V5 registration form. Mr E said it was address L. Tesco said this was different to the address it held.

Mr E told Tesco that he had told it a couple of months before that he was working in L and had moved there. In a subsequent call, Tesco said it had referred the matter to its underwriters.

It was unable to locate a previous call from Mr E where he told it of his change in circumstances. But it had found multiple online quote requests between January 2018 and April 2018: 17 for the L address and 3 for the B address. It's provided us with a screenshot of this information.

Tesco hadn't produced any quotes online because it didn't provide cover for the L address. So Tesco said its decision was to cancel Mr E's policy as if it didn't exist and it would do this from 31 January 2018. This is the date Mr E said he registered his replacement car at address L. It also explained that Tesco wouldn't meet his total loss claim for his car.

And it would keep the premium he'd paid for insurance and use it toward the costs of any third party claim.

Tesco told Mr E it wouldn't provide insurance for him in the future.

In May 2018 Mr E provided utility bills for address B to Tesco. He wanted it to reconsider its decision and reinstate his policy. However, I think Tesco acted reasonably. Mr E insisted he had no evidence he lived at either address when he told it the address on the V5 registration document was address L. And he said he'd told Tesco he lived at address L. And because Mr E used address L to register his car in January 2018, I think this was the main address where he was living and working. So I think he should have told Tesco about his change of address. The incident happened in L. And Mr E tried to obtain quotes to insure his replacement car between January and April 2018 on Tesco's website using address L but could see no quote was available. So he also obtained quotes for his replacement car under address B and his policy remained in place under address B.

So although Mr E provided utility bills for address B in May 2018, I think the information shows that his main address where Mr E kept his car was in L since January 2018. I think he should have told Tesco this at the time. Tesco highlighted that this was a significant change which Mr E needed to tell it about. We also consider a change of address to be a significant change in circumstances and therefore something that needs to be declared to the insurer. There isn't any evidence that he did.

When Tesco told Mr E about its decision, he said his main address was B. Tesco has shown from the online quotes screenshot that it wouldn't have provided cover for address L. On balance, I think the online quotes show Mr E intended to change his main address to L. But because a quote wasn't provided, I think it's more likely than not, that he didn't tell Tesco in order to remain insured under address B. But, on balance, I think L was the main address where his car was kept. I think this is why he registered his car at address L.

Tesco has raised a separate concern as it's received a provisional licence from Mr E. Mr E told Tesco he had a full European licence when he bought his policy. Tesco said it wouldn't provide insurance cover to Mr E if his licence is a provisional one.

However, as I think Tesco's decision to cancel Mr E's policy as if it didn't exist was reasonable, I don't think this makes a difference to the outcome.

Where a claim has been made under a cancelled policy – in this case known as voidance – Tesco as the last insurer has an obligation under the Road Traffic Act to deal with any third party claim it receives. Tesco hasn't explained this to Mr E. I think it should have. Because of the cancellation, Tesco is entitled to recover any third party claim costs it pays from Mr E.

From what I've seen, I think Tesco's decision to cancel Mr E's policy as if it didn't exist for deliberate misrepresentation is fair and reasonable. This means I don't think it should meet Mr E's claim. It's entitled to keep the premium. But in any event as it already met a total loss claim Mr E made in January 2018, Mr E always owed the full year's premium.

my final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 22 March 2019.

Geraldine Newbold
ombudsman